IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.700 OF 2002

Lakhmichand Ramchand Asrani ..Petitioner.

Vs.

Municipal Corporation of Greater Mumbai & Ors. ..Respondents.

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Mr.Pankaj Kawale i/b Shantilal & Co. for the Petitioner.

Mrs.A.R.Joshi for the BMC.

Mr.Milind More, AGP for the State.

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CORAM : DR.D.Y.CHANDRACHUD, J.

17th March, 2005.

ORAL JUDGMENT :

1. One Ramchand Daulatram Asrani, who was the father of the Petitioner, was during his life time seized and possessed of Plot No.41, admeasuring 569.40 sq.mtrs. The plot was affected by a reservation for a garden under Town Planning Scheme V, Santacruz, Mumbai. The land owner expired on 9th June, 1983 leaving behind him his last will and

testament dated 24th March, 1976 under which the Petitioner was appointed as sole executor. Probate is stated to have been granted to the Petitioner by this Court on 21st November, 1992 in the exercise of the testamentary and intestate jurisdiction. On 30th August, 1973, a town planning scheme, TPS V (First Variation) for Santacruz was drawn up and published. Final Plot 41 was a part of the Town planning scheme. An arbitrator was appointed under Section 72 of the Maharashtra Regional and Town Planning Act, 1966. The Arbitrator made his award on 30th August, 1973 and granted compensation in the amount of Rs.68,328/- for Final Plot 41. Appeals were filed for the enhancement of compensation before the Tribunal of Appeal. On 13th August, 1975, the compensation that was payable was increased to Rs.77,723/- in respect of Final Plot 41. Possession of Final Plot 41 is stated to have been taken on 1st February, 1982. Until August 1983, no compensation was awarded upon the vesting of Final Plot 41 in the Municipal Corporation.

2. Section 88 of the Act provides that on and after the day on which a final scheme comes into

force, all lands required by the Planning Authority shall, unless it is otherwise determined in such scheme, vest absolutely in the Planning Authority free from all encumbrances; all rights in the original plots which have been reconstituted shall determine; the reconstituted plots shall become subject to the rights settled by the arbitrator and the Planning Authority shall hand over possession of the final plots to the owners to whom they are allotted in the final scheme. On 19th August, 1983, the Petitioner addressed a letter to the First Respondent through an advocate demanding the payment of compensation awarded by the arbitral tribunal. Thereafter, a further letter dated 1st July, 1986 came to be addressed with the same request demanding compensation together with interest at the rate of 12% per annum. In the alternative, the Municipal Corporation was requested to consider either the release of the acquired plot to enable the Petitioner to conduct a school thereon or to allot any other alternative land. On 2nd August, 1986 the Executive Engineer, Town Planning called upon the Petitioner to address his request to the Ward Officer of the H Ward since the matter pertained to the implementation of a

Town Planning Scheme. On 27th September, 1986, the Ward Officer in the H East Ward called upon the Petitioner to produce the property registration card with certified copies of documents showing his ownership of the property and the position in regard to the payment of government dues. In response, on 6th May, 1987 the Petitioner enclosed a photocopy of the Sanad issued by the Special District Inspector - Land Records -I, Bombay Suburban District, a copy of the transfer deed dated 17th November, 1962 and of a plan of Final Plot 41 in T.P.S. V. In a representation dated 23rd September, 1988, to the Municipal Commissioner, the Petitioner made a grievance of the fact that despite four previous letters, no compensation had been paid to him. In the meantime, the Petitioner stated, the plot was overrun by unauthorized hutments and he sought either the release of the plot or an allotment of alternative land. Nearly a decade elapsed thereafter. There was no intimation to the Petitioner either in regard to his request for payment of compensation or with reference to the alternatives which he had suggested.

3. On 24th September, 1996 the Petitioner addressed a letter to the Slum Rehabilitation Authority since the land had been declared as a slum on 27th August, 1996 under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act,1972, seeking permission to carry out development thereon. The authority responded on 24th April, 1997 stating that under Development Control Regulation 33(10), the proposal could be processed if the Petitioner had the consent of the slum dwellers. On 11th August, 2000 the Petitioner's advocate addressed a detailed representation seeking inter alia the disbursement of the amount of compensation. The representation recorded that even at that stage Final Plot 41 stood in the name of the Petitioner in the redistribution and valuation statement and though the Petitioner was the absolute owner of the land no payment had been released. On 17th October, 2000, the Deputy Chief Engineer of the Municipal Corporation informed the Petitioner that the sanctioned Town Planning Scheme had come into force on 1st February, 1982; that the Petitioner had been dispossessed of Final Plot 41 which had been reserved for a garden and which thereupon vested in

the Municipal Corporation. There was a reference to the fact that an amount of Rs.77,723.10 had been awarded as compensation. The Petitioner was advised to contact the Ward Officer, who had the authority to implement the scheme, for the payment of compensation. On 21st March, 2001 a representation was addressed by the Petitioner to the Municipal Corporation, the Commissioner and to the Ward Officer demanding the payment of compensation of Rs.77,723/- with interest at 18% per annum. On 27th March, 2001 the Petitioner's advocate was informed that the matter had been forwarded for disposal to the Municipal Commissioner in whose jurisdiction the matter lay and that therefore all further communications may be addressed to him. The Petitioner addressed a reminder dated 6th June, 2001 and eventually instituted these proceedings under Article 226. The prayer in the Petition is for the issuance of an appropriate writ directing that the statutory duty cast upon the authority of paying compensation in accordance with the judgment of the Tribunal dated 13th August, 1975 be performed with such further interest and/or compensation as may be awarded by the Court. In the alternative, there is

a prayer for the return of the acquired plot.

4. The facts which have emerged before the Court show a gross and wanton delay on the part of the Municipal Corporation in performing its statutory obligation and duty of paying compensation to the Petitioner. The Municipal Corporation has deprived the Petitioner of his lawful entitlement to the payment of compensation in accordance with the award of the arbitrator, as modified in appeal by the Tribunal, for two decades. Chapter V of the Maharashtra Regional and Town Planning Act, 1966 deals with town planning schemes. There is a provision for the appointment of an arbitrator under Section 72 and for a Tribunal of Appeal. Section 88 of the Act deals with the effect of a final scheme. Upon the enforcement of a final scheme, all lands required by the Planning Authority vest absolutely in that authority and all rights in the original plots which have been reconstituted stand determined. The Planning Authority has to hand over possession of the final plots to the owners to whom they are allotted. Section 85 of the Act provides that where possession of the land is taken by the arbitrator

under Section 83 or 84, the person interested in such land shall be entitled to interest at the rate of 4% per annum on the amount of compensation payable to him under the final scheme in respect of the said land from the date on which possession is taken till the date on which the amount of compensation is paid to him by the Planning Authority. Section 83, it must be noted, provides for taking up possession of land in advance of the town planning scheme and Section 84 for the enforcement of the order of possession through the law enforcing machinery.

5. The Municipal Corporation in its affidavit in reply of the Sub-Engineer has admitted that in pursuance of the judgment of the Tribunal of Appeal, a rate of Rs.136.50 p.sq.mtr was fixed as compensation for the plot in question and that the total compensation was Rs.77,723/-. The scheme, it has been stated, was finally implemented in 1982 after variations. In the affidavit in reply, it has been stated that it was for the Petitioner to have approached the Respondents immediately after implementation of the scheme and the declaration of the award and it was the Petitioner who did not

care to receive compensation from the Ward Officer. Then it has been stated that there is no provision in the Mumbai Municipal Corporation Act, 1888 to grant interest on the delayed payment of compensation. The claim of the Petitioner to interest has, therefore, been opposed.

6. The facts before the Court clearly show that after the implementation of the scheme in 1982, the Petitioner had made representations on 19th August, 1983 and on 1st July, 1986 for the payment of compensation. On 6th May, 1987, the Petitioner complied with the requisition to produce the property registration card and copies of documents of title. Consistently thereafter the Petitioner sought the disbursal of compensation, but his plea fell on deaf ears. The Municipal Corporation was under a bounden obligation to ensure, immediately upon the vesting of the land under Section 88, the disbursement of compensation to the Petitioner as the rightful owner. There was absolutely no dispute as to title or ownership. In the face of this gross and unexplained delay on the part of the Municipal Corporation the Court exercising constitutional jurisdiction under Article 226 is

not powerless to compensate a citizen for the delay that has been caused by the Municipal Corporation in fulfilling the lawful entitlement of the citizen to the timely payment of compensation for an expropriation of his property.

7. On behalf of the Municipal Corporation, two submissions have been urged. The first is that the Act provides for the payment of only 4% by way of interest under Section 85 and the second, that it was the Petitioner who had made a request for the return of the land or for the allotment of alternative land as a result of which payment was delayed. There is no merit in these submissions. For one thing, Section 85 provides for the payment of interest where possession of land is taken under Section 83, which enables the Planning Authority to take advance possession of the land or under Section 84. But that apart, the provision in the statute for the payment of interest at a rate which is prescribed does not take away the powers of the writ Court under Article 226 to provide recompense to a citizen whose lands have been expropriated, for the damages visited upon him due to a gross and unexplained delay in the payment of compensation to

which he is entitled. The Court does not in such a case award interest at a rate higher than that which is prescribed by the statute. The Court exercising jurisdiction under Article 226 does not disregard statutory prescriptions, subject to constitutional challenges. However, where the statutory authority has failed to meet the lawful entitlement of a citizen to the expeditious payment of compensation which is adjudicated and found due, the Court would be justified in directing the authority to compensate the citizen for the hardship implicit in the delayed disbursal of compensation. The extent of delay, the reasons for the delay and the quantum of recompense are matters for judicial consideration. Like all judicial discretion, this one too has to be exercised judiciously. A culture of accountability must permeate the functioning of public authorities.

8. That the Court has such a power emerges from a decision of the Supreme Court in Chandra Bansi Singh v. State of Bihar ((1984) 4 SCC 316). In that case, there was a delay of nearly a year and a half in taking possession. The Supreme Court held that the Court had the power to grant additional

compensation which was accordingly awarded at the rate of 7 1/2%:

> "So far as this delay is concerned, the appellants have undoubtedly a case for payment of some additional compensation in equity though not under law and as this Court is not only a court of law but a court of equity as well, it will be impossible for us to deny this relief to the appellants. After taking into consideration the various shades and aspects of the case we are clearly of the opinion that apart from compensation which may be awarded by the Collector or enhanced by the Judge or a higher Court, the appellants should get an equitable compensation in the form of interest calculated at the rate of 7 1/2 per cent per annum for two years on the value of land owned by each land-owner. This equitable compensation has been awarded in the special facts of this case and will not be the subject matter of appeal, if any, under the Act on the amount of compensation."

9. In so far as the second submission is

concerned, the correspondence which is on the record shows that the Petitioner had at the earliest possible opportunity on 19th August, 1983 and again on 1st July, 1986 sought the payment of compensation as awarded by the Tribunal with interest. In such a situation, when an exasperated citizen subsequently makes alternative pleas either for the return of his land or for permission to develop the land, that can be no ground to defeat his entitlement to the payment of compensation.

10. During the pendency of this Petition, the Respondents have in pursuance of an interim direction of the Court of 29th April, 2002 handed over a cheque to the Petitioner in a total sum of Rs.1,43,011/- comprising of compensation with interest at the rate of 4% per annum. For the reasons which I have indicated the ends of justice would be served if the Respondents are directed to pay to the Petitioner additional compensation at the rate of 8% per annum on the principal sum of Rs.77,723/- from the date of the enforcement of the Town planning scheme until compensation was actually paid to the Petitioner. The aforesaid payment shall be computed and paid over to the

Petitioner within six weeks from today. The Petition is allowed in these terms with costs.